

**REMARKS**

**A.     35 U.S.C. § 102**

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**1.     Claim 1**

In the Office Action of February 6, 2006, claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Burkhardt et al. Independent claim 1 states that several angular inclinations of a scanning device in relation to at least one scale are detected and a value for a chronological progression of a change in angular inclination of the scanning device is determined. As described in Applicant's Specification with respect to the embodiments of FIGS. 1-4, an example of angular inclination is the quantity W, the amount of tilting of the scanning device relative scale or measuring direction X. Burkhardt et al. does not disclose either 1) the recited detecting several angular inclinations or 2) determining the recited value for a chronological progression of a change in angular inclination of the scanning device. Accordingly, claim 1 is not anticipated by Burkhardt et al. and so the rejection should be withdrawn.

It is noted that the Office Action asserts at page 2 that Burkhardt et al. discloses “[d]etecting several angular positions of a scanning device” (emphasis added). However, claim 1 refers to detecting several angular inclinations of a scanning device and not several angular positions. The Office Action at page 8 further relies on the following passage as “suggesting an inclination (error) value”:

evaluating unit. The absolute position value of the second reference mark  $R2_i$  is superimposed on the absolute position value of the first reference mark  $R1_i$  with the correct algebraic sign (+ or -), along with the counting value of the counter. This counting value (Col. 3, ll. 19-23).

The above passage only regards a distance measurement between two positions along the scale. There is no mention of determining an inclination.

Page 8 of the Office Action also takes selected passages from Applicant's own Specification at page 5, lines 6, 7, 13 and 14 as suggesting that the term "inclination" suggests an error value. However, the passages refer to European Application 0 555 507 and not Applicant's invention. Looking at Applicant's description of the embodiment of FIGS. 1-3 of his invention, the angular position W obviously refers to a tilt/inclination of the scanning device 2 with respect to the linear measuring direction X or scale 1. This is consistent with the definition of inclination:

3 a : A deviation from the true vertical or horizontal: SLANT; also  
: the degree of such deviation . . . c (1): the angle determined by  
two lines or planes (2): the angle made by a line with the x-axis  
measured counterclockwise from the positive direction of that axis  
Webster's Ninth New Collegiate Dictionary, p. 609 (copy enclosed).

Since the meaning of the term "inclination" is clear and Burkhardt et al. does not disclose detecting several angular inclinations of a scanning device in relation to at least one scale as recited in claim 1. Accordingly, the rejection is improper and should be withdrawn.

The rejection is improper for the additional reason that Burkhardt et al. does not disclose , determining the recited value for a chronological progression of a change in angular inclination of the scanning device. Since it has been shown that Burkhardt et al. does not disclose detecting the recited angular inclinations, it follows that Burkhardt et al. does not disclose determining a chronological progression of a change in angular inclination. Accordingly, the rejection should be withdrawn.

Despite the impropriety of the present invention, claim 1 is being amended to further clarify the nature of the recited term "inclination." This is being done by clarifying that the angular inclination is in relation to a linear measuring direction of at least one linear scale. Since the passage at column 13, lines 19-23 relied on by the Office Action appears to regard the angular measuring device of FIG. 9 and so does not suggest using either a linear scale or a linear

measuring direction, the claims should be deemed patentable over Burkhardt et al.

**2. Claims 16-19 and 23**

Claims 16-19 and 23 were rejected under 35 U.S.C. § 102(b) as being anticipated by Burkhardt et al. Independent claim 16 states that the first module determines angular inclinations of a scanning device with respect to a measuring direction and the second module determines a value for a chronological progression of several angular inclinations. Burkhardt et al. does not disclose either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological progression of several angular inclinations for reasons similar to those given above in Section A.1. Accordingly, claim 16 and its dependent claims are not anticipated by Burkhardt et al. and so the rejection should be withdrawn.

Despite the impropriety of the present invention, claim 16 is being amended to further clarify the nature of the recited term “inclination.” This is being done by clarifying that the invention regards a linear position measuring system, the angular inclination is in relation to a linear measuring direction of at least one linear scale. Since the passage at column 13, lines 19-23 relied on by the Office Action appears to regard the angular measuring device of FIG. 9 and so does not suggest using either a linear scale or a linear measuring direction, the claims should be deemed patentable over Burkhardt et al.

**B. 35 U.S.C. § 103**

**1. Burkhardt et al. and Hagl et al.**

Claim 20 was rejected under 35 U.S.C. § 103 as being obvious in view of Burkhardt et al. and Hagl et al. Claim 20 depends indirectly on claim 16. As mentioned above in Section A.2, Burkhardt et al. does not disclose nor suggest either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological

progression of several angular inclinations. Hagl et al. does not cure the deficiencies of Burkhardt et al. since Hagl et al. does not suggest altering Burkhardt et al. to have 1) a first module that determines angular inclinations or 2) a second module that determines a value for a chronological progression of several angular inclinations. Furthermore, Hagl et al. does not disclose nor suggest altering Burkhardt et al. to use either a linear scale or a linear measuring direction. Without such suggestion, the rejection should be withdrawn.

It is noted that the Office Action has asserted that the patentability of claim 20 stands or falls with the patentability of claim 16 since the arguments are the same as given with respect to claim 16. This is not the case. The arguments are different. The argument regarding claim 16 regards anticipation while the argument regarding claim 20 regards obviousness for the combination of Burkhardt et al. and Hagl et al. Furthermore, it is not proper to make a rejection based on claims standing or falling together. Such a rejection is only proper in the context of an Appeal. Prior to an Appeal, the Examiner's job is to examine each claim separately and make an independent determination of patentability for each claim.

## **2. Burkhardt et al. and Schwaiger et al.**

Claim 22 was rejected under 35 U.S.C. § 103 as being obvious in view of Burkhardt et al. and Schwaiger et al. Claim 22 depends indirectly on claim 16. As mentioned above in Section A.2, Burkhardt et al. does not disclose nor suggest either 1) the recited first module that determines angular inclinations or 2) the recited second module that determines a value for a chronological progression of several angular inclinations. Schwaiger et al. does not cure the deficiencies of Burkhardt et al. since Schwaiger et al. does not suggest altering Burkhardt et al. to have 1) a first module that determines angular inclinations or 2) a second module that determines a value for a chronological progression of several angular inclinations. Furthermore, Schwaiger et

al. does not disclose nor suggest altering Burkhardt et al. to use either a linear scale or a linear measuring direction. Without such suggestion, the rejection should be withdrawn.

It is noted that the Office Action has asserted that the patentability of claim 22 stands or falls with the patentability of claim 16 since the arguments are the same as given with respect to claim 16. This is not the case. The argument regarding claim 16 regards anticipation while the argument regarding claim 20 regards obviousness for the combination of Burkhardt et al. and Schwaiger et al. Furthermore, it is not proper to make a rejection based on claims standing or falling together.

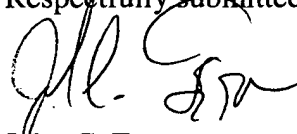
**C.     Claims 2-15 and 21**

Applicant notes with appreciation that claims 2-15 and 21 have been indicated to contain allowable subject matter.

## CONCLUSION

In view of the arguments above, Applicant respectfully submits that all of the pending claims 1-23 are in condition for allowance and seek an early allowance thereof. If for any reason, the Examiner is unable to allow the application in the next Office Action and believes that an interview would be helpful to resolve any remaining issues, he is respectfully requested to contact the undersigned attorneys at (312) 321-4200.

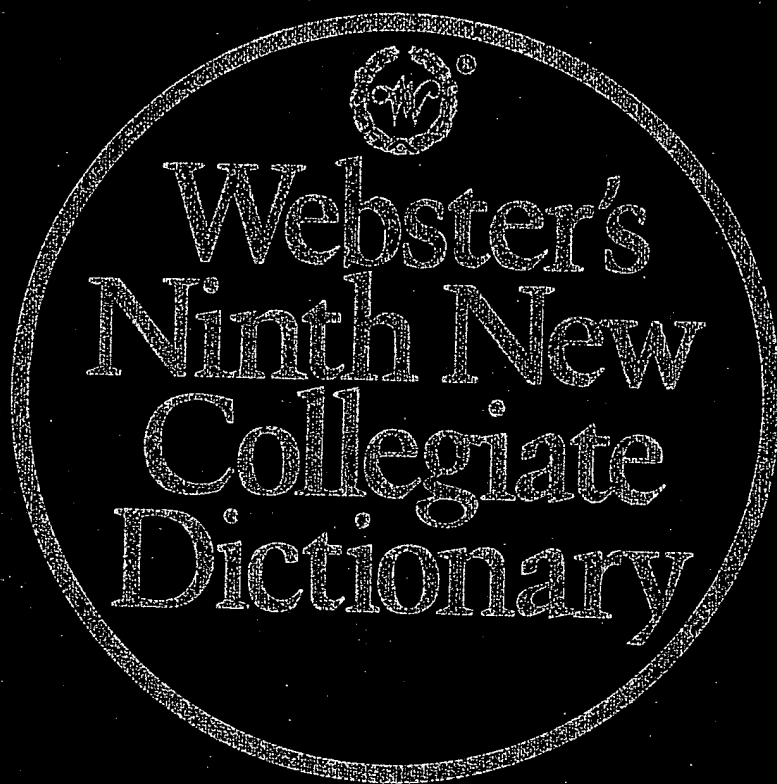
Respectfully submitted,

A handwritten signature in black ink, appearing to read 'J.C. Freeman', is written over the typed name.

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a use of spells or verbal charms of magic; also: a written or recorded a particular effect. — *in-cant-a-to-ry* \in-'kant-ə-tō-ē\ *n* (ME, fr. *L. incantare*, fr. neut. of *incantare* impure, fr. *incantare* pure — more at CASTE) (13c): sexual intercourse between persons so closely related that they are forbidden by law to marry; also the statutory crime of such a relationship *syn* see ADULTERY  
*in-cen-sive* \in-'ses(h)-chə-wəs\ *adj* (1532) 1: constituting or involving incense 2: guilty of incest — *in-cen-sue-ous-ly* *adv* — *in-cen-tu-ous-*

*in-cen-tu-ous-ly* *adv* (ME, fr. OE *ynce*, fr. *L. uncia* — more at OUNCE) (bef. 12c) 1: a unit of length equal to 1/16 yard — see WEIGHT table 2: a small amount, distance, or degree (is like cutting a dog's tail off by 1/16 inch) (Friedman) 3 pl: STATURE, HEIGHT 4: a fall (as of rain or snow) sufficient to cover a surface or to fill a gauge to the depth of one inch 5: a degree of atmospheric or other pressure sufficient to balance the weight of a column of liquid (as mercury) one inch high in a barometer or manometer *c*: WATER-INCH — every inch: to the utmost degree (looks every inch a winner) — within an inch of: almost

*in-cin-* (1599) to move by small degrees (the long line of people ~ing the stairs) *vi*: to cause to move slowly (sooner or later they ~ing prices back up) — *Forbes*

*in-cin-* (ME, fr. ScGael [nnis] chiefly Scot (15c): ISLAND

*in-cin-* (1605): measuring a specified number of inches

*in-char-* (1605) *comb form*: one that has a dimension of a specified number of inches

*in-ch-* (1599) *adv* [inch + -meal (as in piecemeal)]

*in-ch-* (1530) *adv* [inch + -meal (as in piecemeal)]

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*syn* INCITE, INSTIGATE, ABET, FOMENT mean to spur to action. INCITE stresses a stirring up and urging on, and may or may not imply initiating; INSTIGATE definitely implies responsibility for initiating another's action and often connotes underhandedness or evil intention; ABET implies both assisting and encouraging; FOMENT implies persistence in goading.

*in-ci-vil-ity* \in-(t)-sə-'vil-ət-ē\ *n* [MF *incivilité*, fr. LL *incivilitas*, *incivilitas*, fr. *incivilis*, fr. *L. in-* + *civilis* civil] (1584) 1: the quality or state of being uncivil 2: a rude or discourteous act

*in-clem-en-cy* \in-'klem-ən-sē\ *n* (1559) the quality or state of being inclement

*in-clem-ent* \in-'klem-ənt\ *adj* [L *inclement*, *inclemens*, fr. *in-* + *clement*, *clemens* clement] (1621): lacking clemency: as a: physically severe: STORMY (~ weather) *b* archaic: severe in temper or action: UNMERCIFUL — *in-clem-ent-ly* *adv*

*in-clin-able* \in-'kli-nə-bəl\ *adj* (15c): having a tendency or inclination; also: disposed to favor or think well of

*in-clin-a-tion* \in-'kli-nə-shən, -jən\ *n* (14c) 1 *a* obs: natural disposition: CHARACTER *b*: a particular disposition of mind or character: PROPENSITY: *esp*: LIKING (had little ~ for housekeeping) 2: an act or the action of bending or inclining: as *a*: BOW, NOD *b*: a tilting of something 3: *a*: a deviation from the true vertical or horizontal: SLANT: also: the degree of such deviation *b*: an inclined surface: SLOPE *c* (1): the angle determined by two lines or planes (2): the angle made by a line with the x-axis measured counterclockwise from the positive direction of that axis 4: a tendency to a particular aspect, state, character, or action (the clutch has an ~ to slip) — *in-clin-a-tion-ally* *adv*

*in-cline* \in-'klin\ *vb* *in-clined*; *in-clin-ing* [ME *inclinen*, fr. MF *incliner*, fr. *L. inclinare*, fr. *in-* + *clinare* to lean — more at LEAN] *vi* (14c) 1: to bend the head or body forward: BOW 2: to lean, tend, or become drawn toward an opinion or course of conduct 3: to deviate from a line, direction, or course: *specif*: to deviate from the vertical or horizontal ~ *vi* 1: to cause to stoop or bow: BEND 2: to have influence on: PERSUADE (his love of books inclined him toward a literary career) 3: to give a bend or slant to — *in-clin-er* *n*

*syn* INCLINE, BIAS, DISPOSE, PREDISPOSE mean to influence one to have or take an attitude toward something. INCLINE implies a tendency to favor one of two or more actions or conclusions; BIAS suggests a settled and predictable leaning in one direction and connotes unfair prejudice; DISPOSE suggests an affecting of one's mood or temper so as to incline one toward something; PREDISPOSE implies the operation of a disposing influence well in advance of the opportunity to manifest itself.

*in-cline* \in-'klin\ *n* (1846): an inclined plane: GRADE, SLOPE

*in-clined* \in-'kline, 2 also 'in-\ *adj* (14c) 1: having inclination, disposition, or tendency 2 *a*: having a leaning or slope *b*: making an angle with a line or plane

*inclined plane* *n* (1710): a plane surface that makes an oblique angle with the plane of the horizon

*in-clin-ing* \in-'kli-nig\ *n* (14c) 1: INCLINATION 2 archaic: PARTY, FOLLOWING

*in-clin-om-e-ter* \in-'kli-nəm-ət-ər, -jən; -in-'kli-\ *n* (1842) 1: an apparatus for determining the direction of the earth's magnetic field with reference to the plane of the horizon 2: a machinist's clinometer 3: an instrument for indicating the inclination to the horizontal of an axis of a ship or an airplane

*in-clip* \in-'krip\ *vt*, archaic (1608): CLASP, ENCLOSE

*in-close, inclosure* *var* of ENCLOSE, ENCLOSURE

*in-clude* \in-'klud\ *vt* *in-clud-ed*; *in-clud-ing* [ME *includen*, fr. *L. includere*, fr. *in-* + *cludere* to close — more at CLOSE] (15c) 1: to shut up: ENCLOSE 2: to take in or comprise as a part of a whole 3: to contain between or within (two sides and the included angle) — *in-clud-able* or *in-clud-ible* \in-'klud-ə-bəl\ *adj*

*syn* INCLUDE, COMPREHEND, EMBRACE, INVOLVE mean to contain within as part of the whole. INCLUDE suggests the containment of something as a constituent, component, or subordinate part of a larger whole; COMPREHEND implies that something comes within the scope of a statement or definition; EMBRACE implies a gathering of separate items within a whole; INVOLVE suggests inclusion by virtue of the nature of the whole, whether by being its natural or inevitable consequence.

*in-clu-sion* \in-'kli-zhən\ *n* [L *inclusion*, *inclusio*, fr. *in-* + *cludere*] (1600) 1: the act of including: the state of being included 2: something that is included: as *a*: a gaseous, liquid, or solid foreign body enclosed in a mass (as of a mineral) *b*: a passive product of cell activity (as a starch grain) within the protoplasm 3: a relation between two classes that exists when all members of the first are also members of the second — compare MEMBERSHIP

*inclusion body* *n* (ca. 1923): a rounded, or oval intracellular body that consists of elementary bodies in a matrix, is characteristic of some virus diseases, and is believed to represent a stage in the multiplication of the virus

*in-clu-sive* \in-'kli-siv, -ziv\ *adj* (1515) 1: comprehending stated limits or extremes (from Monday to Friday ~) 2 *a*: broad in orientation or scope *b*: covering or intended to cover all items, costs, or services — *in-clu-sive-ly* *adv* — *in-clu-sive-ness* *n*

*inclusive disjunction* *n* (1942): a complex sentence in logic that is true when either or both of its constituent propositions are true — see TRUTH TABLE

*inclusive of prep* (1709): including or taking into account (the cost of building inclusive of materials)

*in-co-er-ible* \in-'kō-ər-sə-bəl\ *adj* (1710): incapable of being controlled, checked, or confined

*in-cog-i-tant* \in-'kaj-ət-ənt\ *adj* [L *incogitant*, *incogitans*, fr. *in-* + *cogitant*, *cogitans*, prp. of *cogitare* to cogitate] (1628): THOUGHTLESS, INCONSIDERATE

*in-cog-i-tant* \in-'kaj-ət-ənt\ *adj* [L *incogitant*, *incogitans*, fr. *in-* + *cogitant*, *cogitans*, prp. of *cogitare* to cogitate] (1628): THOUGHTLESS, INCONSIDERATE

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